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STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

C & R MAINTENANCE, INC  
d/b/a RIZZO SERVICES, a  
Michigan Corporation,

Plaintiff,

vs.

Case No. 2006-2155-CH

RICHMOND REALITY LIMITED  
PARTNERSHIP, et al,

Defendant.

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OPINION AND ORDER

Defendants Richmond Reality Limited Partnership ("RRLP") and Beeding Legal Group, P.C. ("Beeding")<sup>1</sup> have filed a motion for partial summary disposition and sanctions. Plaintiff has filed a response seeking denial of the motions.<sup>2</sup>

Plaintiff filed this action on May 22, 2006. Plaintiff asserted that defendants requested it perform landscaping, waste removal, and snow removal services on property commonly known as 67500 Main Street, Richmond, Michigan. According to plaintiff, it provided services pursuant to the agreements through June 14, 2005. At that time, plaintiff discontinued services due to an alleged outstanding balance. On July 7, 2005, plaintiff filed a claim of lien with the Macomb County Register of Deeds. Plaintiff now

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<sup>1</sup> "Defendants" will be used to reference the moving defendants, RRLP and Beeding.

<sup>2</sup> The Court notes defendants have filed a motion to strike plaintiff's complaint. Pursuant to the Stipulation and Order dated July 31, 2006 plaintiff is permitted to amend its complaint and the Court will not address defendant's motion to strike.



seeks relief for count I, foreclosure of the construction lien, count II, breach of contract, and count III, unjust enrichment.

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

Defendants assert the construction lien is invalid. According to defendants, the services alleged are not improvements pursuant to the Construction Lien Act. In addition, defendants argue the construction lien was not timely filed. With regards to plaintiff's breach of contract claim, defendant Beeding contends no contract exists between Beeding and plaintiff. Defendant Beeding next argues plaintiff's unjust enrichment claim is insufficient since there was no agreement, it received no services pursuant to an agreement, and it obtained no benefit.

Plaintiff responds that it provided improvements to the real property. Plaintiff maintains it substantially complied with the act, therefore the construction lien is proper. Defendant Beeding, plaintiff argues, signed the contracts and had a property interest in the real property to establish a breach of contract or, in the alternative, unjust enrichment. Finally, plaintiff contends relief can be granted on the claims alleged and further discovery is required to establish liability.

The Court will begin its review with defendants' motion for summary disposition of the foreclosure of the construction lien. A construction lien is permitted for any contractor, subcontractor, supplier, or laborer who provides an improvement to real property. MCL 570.1107(1). An improvement is defined as "the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, or installing or affixing a fixture or material, pursuant to a contract." MCL 570.1104(7). A construction lien must be filed within 90 days after the lien claimant last furnished labor or material for the improvement. MCL 570.1111(1).

Here, the defendants argue that landscaping, waste removal, and snow removal, under the contract, are not considered improvements for purposes of MCL 570.1107(1). As the definition indicates landscaping is clearly included and waste and snow removal are arguably permitted. Discovery to determine the labor and materials actually provided by plaintiff would establish whether those services are improvements under the statute. The statute should be liberally construed pursuant to MCL 570.1302(1). In addition, substantial compliance with part one of the Construction Lien Act is sufficient to meet the requirements. *Vugterveen Systems Inc v Olde Millpond Corp*, 454 Mich 119, 121; 560 NW2d 43 (1997). Plaintiff has alleged a claim upon which relief can be granted.

Next, defendants contend that the construction lien was untimely, but plaintiff alleges in its complaint that it provided labor or material to the real property within 90 days of filing the construction lien. Under MCR 2.116(C)(8) the Court may only

consider the pleadings and must accept the factual allegations as true. The Court finds plaintiff's claim for foreclosure on the construction lien is legally sufficient.

The Court will now turn to plaintiff's breach of contract claim against Beeding. The essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). Beeding contends it was not a party to the contract, but the record demonstrates it was the billing address, the contact, and signor. See Exhibits A and B of Defendants' brief in support of motion for partial summary disposition. Plaintiff, at a minimum, has demonstrated a valid claim against Beeding and discovery would determine liability.

Finally, the Court will consider plaintiff's unjust enrichment claim against Beeding. To sustain a claim for unjust enrichment, plaintiff needs to show that defendants received a benefit from plaintiff and that an inequity resulted to plaintiff as a consequence of defendants' retention of that benefit. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 137; 676 NW2d 633 (2003). The Court finds plaintiff sufficiently alleges Beeding had a property interest in the real property and received a benefit from the services it provided. See Exhibit F of Plaintiff's brief in response to defendant's motion for summary disposition. Therefore, plaintiff has demonstrated a legally sufficient unjust enrichment claim.

In conclusion, plaintiff has stated claims against defendants upon which relief can be granted. Defendants claim for sanctions is denied as the Court is satisfied plaintiff's complaint possessed a good faith argument.

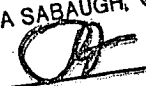
For the reasons set forth above, defendants' motion for partial summary disposition is DENIED and defendants' motion for sanctions is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Dated: August 21, 2006

DONALD G. MILLER  
Circuit Court Judge

CC: Michael Greiner  
Anthony Viviani  
Frank Krycia  
Charles M. Penzien  
Robert J. Seibert

DONALD G. MILLER  
CIRCUIT JUDGE  
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